

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, ex rel.
LESLIE A. NEWMAN, Commissioner of
Commerce and Insurance for the State
of Tennessee,

Petitioner,

v.

UNIVERSAL CARE OF TENNESSEE,
INC.,

Respondents.

No. 03-1614-II

FILED
2009 JAN 30 PM 1:47
CLERK OF CHANCERY CT.
DAVIDSON CO. CHANCERY CT.
D.C. & H.

MOTION FOR FINAL ORDER OF TERMINATION OF LIQUIDATION
AND DISCHARGE OF LIQUIDATOR

Leslie A. Newman, Liquidator of Universal Care of Tennessee ("UCT"), by Special Deputy Liquidator Paul Eggers whose affidavit is submitted herewith, moves this Court pursuant to *Tenn. Code Ann. § 56-9-334* for an Order as follows:

1. Ordering the payment of costs in this matter;
2. Authorizing the payment of fees and expenses incurred in connection with closure of this matter and approved by the Liquidator after proper administrative review;
3. Finding that an additional distribution to Class 2 claimants is uneconomic;
4. Authorizing the SDL to transfer the remaining funds of UCT, if any, to the Tennessee Department of Commerce and Insurance, pursuant to *Tenn. Code Ann. § 56-9-333(a)*, to assist with administrative expenses of receiverships that lack sufficient assets to fund administration costs of receivership proceedings;
5. Dissolving the liquidation and closing the case;

6. Discharging the Liquidator, her staff, prior liquidators, and the Special Deputy Liquidator from any further obligations or duties in connection with this matter; and

7. Pursuant to *Tenn. Code Ann. § 56-9-336*, authorizing the Special Deputy Liquidator to destroy the records of UCT after thirty (30) days from the date the Order becomes final.

IN SUPPORT of this motion, the Liquidator states that, based upon the following, the Liquidation is ready to be closed.

1. In an Order entered April 4, 2008 (the “Distribution Order”), the Court approved the valuation and report of claims and the distribution of assets to approved Class 2 claimants. In accordance with the Order, the distribution checks were issued and unclaimed funds were transferred to the State Treasurer. Claimants were paid 63.4% of the approved amount of their claims. Aff. Eggers, ¶ 3.

2. An Internal Revenue Service (IRS) Form 1099 was issued to each person who received a payment from UCT during 2008. A 1096 Report, a Form 945, and the penalty tax withholding were issued to the IRS for providers that failed to submit to the Liquidator updated and correct taxpayer identification numbers prior to the final distribution. Aff. Eggers, ¶ 5.

3. All known obligations of the receivership have been accounted for and reconciled. Aff. Eggers, ¶ 6.

4. Fees and expenses through December 31, 2008, have been paid and a motion for the Court’s approval of the fees is being filed herewith. Aff. Eggers, ¶ 7.

5. After payment of all costs incurred through December 31, 2008, approximately \$34,671.00 remains in the estate. Exh. A, Aff. Eggers. Class 1 administrative expenses incurred after January 1, 2009, will be approximately \$33,924.00. Aff. Eggers, ¶ 8. An itemization of the

costs is attached as Exhibit B to the Affidavit of Paul Eggers. The costs include fees of UCT's special deputy liquidator, legal counsel and independent contractors (collectively "contractors"). The contractors' billing statements will be submitted to the Liquidator and her staff for review and approval in accordance with the Department's administrative guidelines pursuant to *Tenn. Code Ann. § 56-9-310(a)(4)*. Only the actual fees that are determined by the Liquidator upon proper review to be reasonable will be approved and paid by the Liquidator. Aff. Eggers ¶¶ 8-9. The Liquidator requests that the Class 1 administrative expenses of contractors from January 1, 2009 through the close of the Liquidation that the Liquidator determines upon proper review to be reasonable and payable be deemed approved pursuant to *Tenn. Code Ann. § 56-9-310(a)(4)* through the final order closing the Liquidation and that no further fee motions be required by the Court.

6. After payment of the remaining Class 1 administrative expenses for January 1, 2009 through the close of the Liquidation, including court costs, approximately \$747.00 will remain in UCT's account. The Liquidator finds that, pursuant to *Tenn. Code Ann. § 56-9-334(a)*, it would be uneconomic to distribute this amount to approved Class 2 claimants and requests that the remaining amount be transferred to the closed estate fund maintained at the direction of the Commissioner of the Tennessee Department of Commerce and Insurance pursuant to *Tenn. Code Ann. § 56-9-333(a)* to assist with administrative expenses of receiverships that lack sufficient assets to fund administration costs of receivership proceedings. Aff. Eggers, ¶ 10.

7. UCT pays a monthly fee to store its records. The Liquidator finds no benefit in maintaining UCT's records. The Liquidator requests, pursuant to *Tenn. Code Ann. § 56-9-336*, that the Court order that thirty (30) days after entry of the order, the Liquidator destroy all records of UCT that are in the possession or control of the Liquidator. The estimated cost of destroying

the records is included in the estimate of administrative expenses to be incurred on or after January 1, 2009.

8. The Liquidator further requests that upon completion of the tasks set forth in this Motion, including payment of final expenses and costs and transfer of any remaining funds, that this matter be closed and the Liquidator, her staff, prior liquidators, and the Special Deputy Liquidator be discharged from any further obligations or duties in connection with this matter.

WHEREFORE, the Liquidator respectfully requests the Court enter a final order granting this motion and ordering the following:

1. The Liquidation of UCT is terminated.
2. The Liquidator, along with her staff and prior statutory receivers and special deputy receivers, are finally and fully discharged from all duties as Liquidator of the UCT receivership pursuant to *Tenn. Code Ann. § 56-9-334(a)*.
3. Pursuant to *Tenn. Code Ann. § 56-9-310(a)(4)*, the Liquidator shall pay all Class 1 administrative fees for outside counsel and third party contractors from January 1, 2009 through the final discharge of the Liquidation that the Liquidator determines payable after the proper administrative review, and no further fee motions are to be submitted to the Court.
4. The Liquidator shall pay all remaining court costs in this case.
5. Pursuant to *Tenn. Code Ann. § 56-9-336*, the Liquidator shall destroy any remaining documents that are in the Liquidator's possession, custody, or control thirty (30) days after the entry of this final order of termination of the Liquidation.
6. After the payment of all remaining Class 1 administrative expenses and fees, the Liquidator shall transfer the remaining reserve funds of the UCT estate to the closed

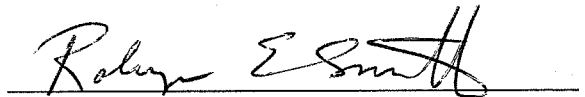
estate no asset fund maintained at the direction of the Commissioner of the Tennessee Department of Commerce and Insurance pursuant to *Tenn. Code Ann. § 56-9-333(a)*.

7. This is a final order.

Respectfully submitted,

HUBBARD, BERRY & HARRIS, PLLC

By:



William B. Hubbard (2770)

Robyn E. Smith (16297)

SunTrust Bank Building, Suite 1420

201 Fourth Avenue, North

Nashville, Tennessee 37219

615-251-5468

Attorneys for Liquidator of Universal Care of Tennessee

**THIS MOTION IS SET TO BE HEARD ON THE 13th DAY OF February, 2009
AT 9:00 a.m. FAILURE TO FILE AND SERVE A TIMELY WRITTEN RESPONSE TO
THE MOTION MAY RESULT IN THE MOTION BEING GRANTED WITHOUT
FURTHER HEARING.**

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been forwarded by first class mail to the following individuals on this the 30th day of January, 2009:

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Robyn E. Smith

**IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

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**AFFIDAVIT OF PAUL EGGERS
IN SUPPORT OF MOTION FOR FINAL ORDER TO CLOSE
THE LIQUIDATION OF UNIVERSAL CARE OF TENNESSEE**

1. My name is Paul Eggers. I am the Special Deputy Liquidator of Universal Care of Tennessee in Liquidation (UCT). UCT was placed in liquidation on July 2, 2003.

2. As Special Deputy Liquidator, I manage the day to day operations of the liquidation of UCT. My duties include marshaling assets of UCT, overseeing claims adjudication and processing, assisting with litigation, and distributing funds to claimants.

3. I have determined, and the Liquidator concurs, that all of the assets of UCT justifying the expense of collection and distribution have now been distributed and, pursuant to *Tenn. Code Ann. § 56-9-334(a)*, the liquidation of UCT should be terminated.

4. In April 2009, distribution checks totaling \$32,057,550.46 were mailed to approved Class 2 claimants. This represented a distribution rate of approximately 63.4% of the

approved claim amount. I transferred to the State Treasurer's Office the funds that were not claimed after ninety days.

5. I prepared, and on approximately January 29, 2009, mailed an Internal Revenue Service (IRS) Form 1099 to each claimant who negotiated a distribution check and to each contractor who has received a payment from UCT during 2008. I also submitted to the IRS the 1096 Report for the Liquidation and the Form 945 and the penalty tax withholdings for providers that failed to provide the Liquidation updated and correct taxpayer identification numbers prior to the final distribution.

6. Attached as Exhibit A is a financial report of the assets and liabilities of UCT as of December 31, 2008. I prepared this report based upon the financial records I maintain. All known obligations of the receivership have been accounted for and reconciled.

7. Prior to making the distribution to Class 2 claimants, \$95,353.47 was reserved to pay Class 1 administrative expenses. Fees and expenses incurred through December 31, 2008 have been paid and motions for approval of fees through December 31, 2008 are being filed with the Court with the motion to close the Liquidation. Approximately \$34,671.00 remains for the payment of Class 1 expenses incurred after December 31, 2008.

8. I prepared an estimate of Class 1 costs that UCT will incur after December 31, 2008, in connection with closing the estate. The estimated Class 1 costs that will be incurred after December 31, 2008, are \$33,924.00. An itemized list of the estimated costs are attached as Exhibit B. Estimates for work to be performed by UCT's legal counsel and independent contractors (collectively "contractors") were determined by the contractors in consultation with me, taking into consideration the time that is reasonably anticipated as necessary to close the estate.

9. The contractors' and my billing statements will be submitted to the Liquidator and her staff for review and approval in accordance with the Department's administrative guidelines pursuant to *Tenn. Code Ann. § 56-9-310(a)(4)*. Only the actual fees that are determined by the Liquidator upon proper review to be reasonable will be approved and paid by the Liquidator.

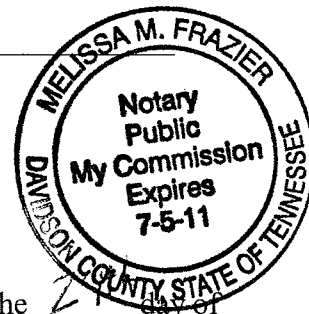
10. Based upon the above estimates, approximately \$747.00 will remain in UCT's accounts after all expenses are paid. Distributing these funds to approved Class 2 claimants would be uneconomic; therefore, I recommend, and the Liquidator concurs, that the remaining funds be transferred to the closed estate no asset fund maintained at the direction of the Commissioner of the Tennessee Department of Commerce and Insurance pursuant to *Tenn. Code Ann. § 56-9-333(a)*.

11. UCT pays a monthly fee to store its records. At the close of this receivership, all of UCT's assets will have been distributed and there will be no funds to pay for storage of the records. I am aware of no benefit in retaining UCT's records and, therefore, recommend that the records be destroyed after the estate is closed.

FURTHER AFFIANT SAITH NOT.

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Paul Eggers
EGGERS



SUBSCRIBED AND SWORN to before me by Paul Eggers, on the 2 day of JANUARY, 2009.

Melvin M. Borjic
Notary Public

UNIVERSAL CARE OF TENNESSEE - IN LIQUIDATION
SCHEDULE OF REVENUE AND EXPENSES
FOR THE PERIOD July 2, 2003 thru December 31, 2008

July 2, 2003 -
December 31, 2008

LIQUIDATION REVENUE

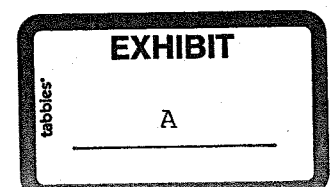
INTEREST INCOME	\$ 1,368,107
SALE OF FURNITURE	15,305
REFUNDS FROM OVERPAYMENTS	164,502
SUBROGATION RECOVERIES	345,907
PAYROLL TAX REFUND	5,338
MISC RECEIPTS (Note D)	2,248,409
MISC RECEIPTS (Note E)	20,000,000
	-
TOTAL REVENUE	24,147,569

LIQUIDATION EXPENSES

FEES	
RECEIVERS FEES	572,515
LEGAL FEES	1,118,805
CONTRACT LABOR	1,693,999
	<u>3,385,320</u>
ADMINISTRATION EXPENSES	
COMMISSION - SUBROGATION	16,285
OTHER FEES	272,370
TEMPORARY HELP	152,701
RENT	191,812
UTILITIES	59,888
COMPUTER EQUIP PURCHASED	11,849
OFFICE EQUIPMENT	27,151
EQUIPMENT MAINTENANCE	129,478
POSTAGE	22,143
OVERNIGHT SHIPPING	10,365
TELEPHONE	59,321
OFFICE SUPPLIES	17,899
PRINTING	20,909
OUTSIDE COPYING	1,526
STORAGE	8,859
MOVING EXPENSE	15,500
BANK CHARGES	1,800
INSURANCE	12,900
COURT COSTS	1,829
NEWSPAPER NOTICES	7,625
MISC EXPENSE	235
TOTAL ADMINISTRATION EXPENSES	<u>1,042,445</u>
TOTAL FEES AND ADMINISTRATION EXPENSES	<u>4,427,764</u>
ALLOCATION TO ASO SEGMENT	<u>(1,556,315)</u>
NET LIQUIDATION FEES AND ADMINISTRATIVE EXPENSES	<u>2,871,449</u>
LIQUIDATION REVENUE LESS FEES & ADMIN EXPENSES	<u>21,276,120</u>
CLAIMS DISTRIBUTION ON PRE 04-12-02 CLAIMS	<u>(32,057,330)</u>
NET LIQUIDATION GAIN (LOSS)	<u><u>\$ (10,781,211)</u></u>

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UNAUDITED



UNIVERSAL CARE OF TENNESSEE - IN LIQUIDATION
SCHEDULE OF REVENUE AND EXPENSES
FOR THE PERIOD July 2, 2003 thru December 31, 2008

July 2, 2003 -
December 31, 2008

ASO 07-02-03 SEGMENT REVENUE (EXPENSE)	
REINSURANCE RECOVERY	\$ 509,944
REFUNDS FROM OVERPAYMENTS	383,373
SUBROGATION RECOVERIES	655,659
CLAIMS PAID	(13,904,837)
PHARMACY REBATE	970,000
TAX YEAR 2003 PREMIUM TAX PAID	(1,067,965)
TAX YEAR 2004 PREMIUM TAX PAID	(204,188)
TAX YEAR 2005 PREMIUM TAX PAID	(154,601)
TAX YEAR 2006 PREMIUM TAX PAID	(7,458)
TAX YEAR 2007 PREMIUM TAX PAID	(1,931)
OTHER EXPENSES	
ANTARES FEES	(263,932)
CSC	(230,644)
OTHER DIRECT EXPENSES	(12,591)
ALLOCATED LIQUIDATION EXP	(1,556,315)
NET 07-02-03 ASO BEFORE TENNCARE RECEIPTS	(14,885,488)
TENNCARE PREMIUM RECEIVED	17,081,887
RECOVERABLE (PAYABLE) TENNCARE (NOTE F)	(2,196,399)
NET 07-02-03 ASO OPERATIONS	\$ (0)

UNAUDITED

UNIVERSAL CARE OF TENNESSEE - IN LIQUIDATION
NOTES TO 12-31-08 SCHEDULES OF NET ASSETS, REVENUES & EXPENSES

- A The Schedule of Revenue and Expenses is reported in 2 segments:
1. Liquidation Revenue and Expenses
 2. ASO (Administration Services Office - Funded by TennCare)
- B Net assets on 07-02-03 have been restated to reflect the following Pre 07-02-03 ASO balances.
- \$1,426,657 for Receivable for Preventive Care Services - Received 10-13-04
- \$ 131,197 liability for Claims payable. These claims were funded by TennCare prior to 07-02-03. The actual checks were issued 03-22-04.
- \$5,391,500 liability for claims and expense checks funded prior to 07-02-03 but paid by the bank after on or after 07-02-03.
- C Allocation of "Post" expenses to the "ASO" segment is reflected on this statement thru 12-31-07 (See also Note G).
- D Misc Receipts includes a Q3 2005 settlement of \$226,892 from Stephans, Oringher, Richman & Theodora (SORT) AND Q1 2006 includes a \$2,000,000 UCOT v UCI settlement.
- E On 02-16-07 UCOT received \$20,000,000 from TnCare.
- F On 02-13-08 the ASO Segment paid the Bureau of TennCare \$2,196,399 in settlement of the net gain from ASO operations thru 12-31-07.

UNIVERSAL CARE OF TENNESSEE - IN LIQUIDATION
SCHEDULE OF NET ASSETS

	AS OF July 1, 2003	CHANGE July 1, 2003 - December 31, 2008	AS OF December 31, 2008
NEW RECEIVERSHIP BANK ACCOUNTS			
BK OF AMERICA POST	\$	\$ 38,204	\$ 38,204
BK OF AMERICA INV AC		2	2
UCOT BANK ACCOUNTS PRIOR TO RECEIVERSHIP			
FARMERS & MERCHANT POST CLAIM	2,518,274	(2,518,274)	-
FARMERS & MERCHANT POST GENERAL	327,456	(327,456)	-
FARMERS & MERCHANT POST PAYROLL	61,383	(61,383)	-
FARMERS & MERCHANT POST REPO	58,546	(58,546)	-
FARMERS & MERCHANT POST SAVINGS	42,116	(42,116)	-
FARMERS & MERCHANT PRE CLAIM	348,368	(348,368)	-
FARMERS & MERCHANT PRE GENERAL	21,520	(21,520)	-
FARMERS & MERCHANT PRE PAYROLL	74	(74)	-
FARMERS & MERCHANT PRE REPO	777,873	(777,873)	-
ASB POST TNCARE CONTROL AC	3,328,737	(3,328,737)	-
ASB PRE TNCARE CONTROL AC	7,417,796	(7,417,796)	-
ASB CRP MONEY MARKET	4,558	(4,558)	-
BK OF AMERICA PETTY CASH	5,000	(5,000)	-
ASO PRE 07-02-03 SEGMENT (NOTE B)			
A/R TENNCARE - PREVENTIVE CARE SERVICES - RECVD 10-13-04	1,426,657	(1,426,657)	-
A/P CLAIMS -CHECKS ISSUED AFTER 07-02-03	(131,197)	131,197	-
A/P CLAIMS & EXPENSE-CHECKS ISSUED BEFORE 07-02-03	(5,391,501)	5,391,501	-
ASO 07-02-03 SEGMENT A/R (A/P) TENNCARE (NOTE F)			-
OTHER ASSETS & LIABILITIES			
ACCRUED EXPENSES	223	(3,758)	(3,535)
NET ASSETS	\$ 10,815,882	\$ (10,781,211)	\$ 34,671

SCHEDULE OF NET ASSET VALUE CHANGES

	CHANGE
AS OF 07-02-03	\$ 10,815,882
AS OF 09-30-03	10,621,668
AS OF 12-31-03	(194,214)
AS OF 03-31-04	(183,770)
AS OF 06-30-04	(88,579)
AS OF 09-30-04	(85,670)
AS OF 12-31-04	(91,983)
AS OF 03-31-05	(37,959)
AS OF 06-30-05	(92,092)
AS OF 09-30-05	(64,955)
AS OF 12-31-05	116,159
AS OF 03-31-06	(153,122)
AS OF 06-30-06	11,838,906
AS OF 09-30-06	1,899,209
AS OF 12-31-06	11,767,452
AS OF 03-31-07	(71,454)
AS OF 06-30-07	(21,953)
AS OF 09-30-07	11,745,499
AS OF 12-31-07	33,891
AS OF 03-31-08	31,849,578
AS OF 06-30-08	20,070,187
AS OF 09-30-08	31,927,110
AS OF 12-31-08	77,533
AS OF 03-31-09	32,033,837
AS OF 06-30-09	106,727
AS OF 09-30-09	32,108,871
AS OF 12-31-09	75,034
AS OF 03-31-10	34,671
AS OF 06-30-10	(32,074,200)
AS OF 09-30-10	(10,781,211)
AS OF 12-31-10	

UNAUDITED

UCT ESTIMATED COSTS FROM JANUARY 1, 2009 TO CLOSE

Contractor	Description of services	Hours	Hourly rate	Total
Billy Spaulding	Processing of 1099's for 2008, payment of vendor invoices (primarily utilities and rent through close down), reconciling of bank account, responding to requests for financial information	30	\$ 70.00	\$ 2,100.00
Geoff Lee	Assistance in mailing of 1099's, oversight of destruction of records, computer network maintenance	40	\$ 45.00	\$ 1,800.00
Paul Eggers	Review of 2008 1099's, coordination of destruction of claim, historical and financial records, closing of bank accounts, unforeseen issues	80	\$ 100.00	\$ 8,000.00
Hubbard, Berry and Harris, PLLC	Pleadings preparation and court appearances for fee motions and motion to close, communication with client and interested parties regarding same, purge from legal files records covered by order to destroy records and oversee destruction, work with client to complete tasks necessary to close the estate, address unforeseen issues	60	\$ 150.00	\$ 9,000.00
Court costs	Accrued through January 28, 2009 Estimated additional costs			\$ 124.00
				\$ 100.00
Administrative costs (for three months)	Rent and utilities Document storage Document destruction	\$ 3,600		
		\$ 1,000		
		\$ 8,200		\$ 12,800.00
				<u>\$ 33,924.00</u>

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been forwarded by first class mail to the following individuals on this the 30th day of January, 2009:

Sarah Hiestand
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425 Fifth Avenue North
Nashville, Tennessee 37243

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